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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/057,313	04/08/1998	JOHN D. MCCOWN	033449-002	6282

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EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 08/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/057,313

Applicant(s)

McCown et al

Examiner

Steven McAllister

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 12, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21-28, 32-35, and 37-40 is/are pending in the application.
- 4a) Of the above, claim(s) 1-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19, 21-28, 32-35, and 37-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/18/02 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 16-19, 21-35 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art method shown in Freeman in view of Backteman et al and Charles.

Freeman in its discussion of the prior art (generally col. 1, lines 20-38) discloses individually lifting of containers comprising strapped pallets (col. 1, lines 28-30), transporting

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them with the forklift onto a ship, and stacking them there (col. 1, lines 28-30). This operation discloses positioning on the deck or another container of sugar. Freeman also shows using a ramp to move a forklift to and from a ship (see Fig. 3). Freeman does not show using a container having a set of outer walls defining an inner volume and loading freight into that inner volume or a vehicle with a gripper including a spreader, the gripper capable of being raised and lowered, rotated and inclined relative to the body. Backteman et al show securing freight containers C with outer walls defining an inner volume (see Fig. 1). Backteman et al inherently show loading freight into the inner volume since said containers function by holding freight inside their volume. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Freeman by using the containers of Backteman et al to provide for more secure stacking. Charles shows a vehicle with a gripper including a spreader, the gripper capable of being raised and lowered, rotated and inclined relative to the body. It would have been obvious to one of ordinary skill in the art to modify the method of Freeman by using the vehicle of Charles in order to allow horizontal movement of the container without moving the body of the vehicle.

Alternatively, Freeman in its discussion of the prior art (generally col. 1, lines 20-38) discloses individually lifting of containers comprising strapped pallets (col. 1, lines 28-30), transporting them with the forklift onto a ship, and stacking them there (col. 1, lines 28-30). This operation discloses positioning on the deck or another container of sugar. Freeman also shows using a ramp to move a forklift to and from a ship (see Fig. 3). Freeman does not show using a container having a set of outer walls defining an inner volume and loading freight into that inner

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volume or a vehicle with a gripper including a spreader, the gripper capable of being raised and lowered, rotated and inclined relative to the body. Backteman et al show securing freight containers C with outer walls defining an inner volume (see Fig. 1). Backteman et al inherently show loading freight into the inner volume since said containers function by holding freight inside their volume. Backteman et al further show a gripper including a spreader attachment (see Fig. 1) used to lift the containers. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Freeman by using the containers and gripper of Backteman et al to provide for more secure stacking. Charles shows a vehicle capable of raising, lowering, rotating and inclining the gripper relative to its body. It would have been obvious to one of ordinary skill in the art to further modify the method of Freeman by using the vehicle of Charles in order to allow for more flexible movement of the container without moving the body of the vehicle.

Alternatively, Freeman in its discussion of the prior art (generally col. 1, lines 20-38) discloses individually lifting of containers comprising strapped pallets (col. 1, lines 28-30), transporting them with the forklift onto a ship, and stacking them there (col. 1, lines 28-30). This operation discloses positioning on the deck or another container of sugar. Freeman also shows using a ramp to move a forklift to and from a ship (see Fig. 3). Freeman does not show using a container having a set of outer walls defining an inner volume and loading freight into that inner volume or a vehicle with a gripper including a spreader, the gripper capable of being raised and lowered, rotated and inclined relative to the body. Backteman et al show securing freight containers C with outer walls defining an inner volume (see Fig. 1). Backteman et al inherently

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show loading freight into the inner volume since said containers function by holding freight inside their volume. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Freeman by using the containers of Backteman et al to provide for more secure stacking. Charles shows a vehicle with a gripper including a spreader (see Fig. 5 and col. 3, lines 30-35), the gripper capable of being raised and lowered, rotated and inclined relative to the body. It would have been obvious to one of ordinary skill in the art to modify the method of Freeman by using the vehicle of Charles in order to allow horizontal movement of the container without moving the body of the vehicle.

As to claim 17, it is noted that Backteman et al show securing the containers to the deck by semiautomatic twistlocks.

As to claims 18 and 19, it is noted that Backteman et al discloses containers C capable of allowing interconnection of containers by semi-automatic (Fig. 2) twistlocks in a stacked environment. Both Backteman et al (Fig. 1) and Freeman (pg. 1, col. 1, line 29) disclose stacking containers.

As to claim 22, it is noted that Freeman discloses individually lifting of the containers (col. 1, lines 31-32) and he discloses transporting them with the forklift from the ship and stacking them the dock in a warehouse (col. 1, lines 31-32). Freeman also shows using a ramp to move a forklift to and from a ship (see Fig. 3).

As to claim 23, Freeman in view of Backteman et al and Charles show all elements of the claim except securing the ramp to a longitudinal rail. However, it is old and well known in the

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art to secure a ramp to a longitudinal rail (such as hooking the lip of a ramp over a longitudinal rail on the back of a moving truck). It would have been obvious to one of ordinary skill in the art to further modify the method of Freeman by securing the ramp with a longitudinal rail in order to keep the ramp from slipping and increase safety.

As to claim 24, it is noted that Bucketman et al discloses containers C capable of allowing interconnection of containers by semi-automatic (Fig. 2) twistlocks in a stacked environment. Both Bucketman et al (Fig. 1) and Freeman (pg. 1, col. 1, line 29) disclose stacking containers. Freeman additionally discloses offloading the ship with a reach stacker comprising a forklift (pg. 1, col. 1, lines 31-32) and towing to a destination site (p. 1, col. 2, line 24).

As to claim 25, Freeman also inherently discloses repeating the lifting step since multiple forklift trips are necessary to load a large number of loads on a ship.

As to claim 21, Freeman also shows unloading the containers at a destination (col. 1, lines 31-33).

As to claim 26, it is noted that in loading a ship it is inherent that the forklift release the container or one forklift would be required for each container.

As to claim 33, it is inherent that the container is at least partially entered by a workman or vehicle in order to load since the workman or vehicle must handle the load.

As to claim 34, it is noted that as broadly claimed a forklift is a lift stacker since it performs all functions associated with the term.

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As to claim 35, it is noted that Freeman discloses towing the marine vessel with the containers on the deck and that Bucketman et al show securing the containers to the deck.

As to claim 37, raising, lowering, rotating and inclining the gripping portion for each container is inherent in the reach stacker of Charles.

As to claims 38 and 39, each container has a pair of receptacles for spreader attachment adjacent the top edge of the container (Fig.1).

As to claim 40, Freeman in view of Bucketman et al and Charles show all elements of the claim except securing the ramp with a longitudinal rail using a downwardly extending lip. However, it is old and well known in the art to secure a ramp to a longitudinal rail using a downwardly extending lip (such as hooking the lip of a ramp over a longitudinal rail on the back of a moving truck). It would have been obvious to one of ordinary skill in the art to further modify the method of Freeman by securing the depending lip of the ramp with a longitudinal rail in order to keep the ramp from slipping and increase safety.

4. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman in view of Backteman et al and Charles as applied to claim 22 above, and further in view of Teubert.

Freeman in view of Backteman discloses all elements of the claim except securing the ramp to a longitudinal rail on the ship. Teubert discloses securing ramp J to the longitudinal rail seen in Figs. 1 and 2. It would have been obvious to one of ordinary skill in the art to modify

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Freeman by securing the ramp to a longitudinal rail in order to make the ramp's connection more stable and avoid accidents with the forklifts.

Response to Arguments

5. Applicant's arguments filed 6/18/02 have been fully considered but they are not persuasive.

First, the applicant argues that the combination of Freeman with Backteman and Charles is improper because the containers of Backteman could not be stacked inside the boxcars shown in Fig. 1 of Freeman, and generally that the combination is improper because of the configuration of invention of Freeman. However, it is not the invention of Freeman as shown in Figure 1 that is being used in the rejection. Rather, the Freeman patent serves as a publication of a prior art method that predates the Freeman invention (see column 1, lines 20-40 of Freeman). The invention of Freeman, per se, is not a part of the rejection.

Second, the applicant argues that Freeman teaches away from the combination. However, since combination is not based on the invention of Freeman, those teachings are not relevant.

Third, the applicant argues that the combination of Freeman, Backteman and Charles is improper because the lift stacker with spreader attachment of Charles would not function with the container of Backteman because the spreader bar requires receptacles in the top of the container to attach to the container. However, both the Backteman and Charles show that the

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containers have receptacles for attachment by spreader bars (see the quick disconnects of Backteman connected to the spreader in Fig. 1 and the receptacles in container 18 for mating with spreader 15 represented by centerlines in Fig. 1). Additionally, two new alternative rejections have been added.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052.


Steven B. McAllister

August 25, 2002